

## **LOCAL BANKRUPTCY RULE 9075-1**

### **EMERGENCY MOTIONS AND MOTIONS FOR ORDERS SHORTENING TIME**

#### **(a) EMERGENCY MOTIONS**

Emergency motions are those rare matters requiring an order on less than 48 hours notice.

- (1) Obtaining Hearing Date. Unless otherwise ordered by the court, a hearing date may be obtained by telephoning the chambers of the judge to whom the case is assigned or such member of the judge's staff as may be designated by the judge to schedule emergency motions.
- (2) Filing the Moving Papers. Unless otherwise ordered by the court, the moving papers shall be filed at least 2 hours before the time set for hearing and a copy delivered directly to chambers. The motion shall be accompanied by declarations of competent witnesses under penalty of perjury that (i) justify the setting of a hearing on an emergency basis; and (ii) support the granting of the motion itself on the merits.
- (3) Scope of Notice Required. Unless otherwise ordered by the court, immediately upon obtaining a hearing date and time, movant shall give telephonic notice of the emergency hearing to the parties to whom notice of the motion is required to be given by the F.R.B.P. or by these Local Bankruptcy Rules, as well as to any other party that is likely to be adversely affected by the granting of the motion.
- (4) Service of the Moving Papers. Unless otherwise ordered by the court, movant shall serve the moving papers on the parties set forth in paragraph (a)(3) above no later than the time they are filed with the court. Such service shall be by fax or personal service.
- (5) Proof of Notice To Be Presented at the Hearing. Movant shall present to the court at the time of the hearing (i) a declaration of the efforts to give telephonic notice to the parties set forth in paragraph (a)(3) above of the time and place of the hearing and the substance of the motion, and (ii) a proof of service of the moving papers.

**(b) MOTIONS TO BE HEARD ON SHORTENED NOTICE**

For good cause shown, a party may request a non-emergency motion be heard on notice shorter than would otherwise be required by these Local Bankruptcy Rules. Such a request shall be made by written motion for order shortening time for hearing.

- (1) Obtaining Shortened Hearing Date. Unless otherwise ordered by the court, motions requesting an order shortening time shall be filed at the regular intake window of the clerk's office. They shall be accompanied by a memorandum stating the nature of the request and the name of counsel for the opposing party, if known, the reasons for seeking an order shortening time, and points and authorities in support thereof. All motions shall be accompanied by declarations of a competent witness under penalty of perjury that (i) justify the setting of a hearing on shortened notice and (ii) support the granting of the motion itself on the merits. Notice of the motion for order shortening time is not required. The motion for order shortening time will be determined ex parte by the court on the basis of the papers submitted with the motion, subject to the right of any party to object to the adequacy of notice pursuant to subparagraph (c) below.

Unless otherwise ordered by the court, all motions for orders shortening time shall also be accompanied by the substantive motion that is to be heard on shortened notice, together with all declarations and other required papers in support thereof.

- (2) Form of Proposed Order Shortening Time. The proposed order shortening time shall be presented as a separate document. It shall specify the parties to whom notice is proposed to be given, the nature and timing of the proposed shortened notice, which shall not be less than 48 hours, and leave appropriate blanks for the court to insert the date and time of hearing, and the date for serving and filing opposition papers. Upon receipt of the motion for the order, the court shall promptly notify movant of the date and time set for hearing.
- (3) Scope of Notice Required. Unless otherwise ordered by the court, concurrently with filing the motion for order shortening time and the underlying substantive motion, the moving party shall serve both the motion for order shortening time and the underlying substantive motion on the parties to whom notice of the substantive motion is required to be given by the F.R.B.P. or by these Local Bankruptcy Rules, as well as to any other party that is likely to be adversely affected by the granting of the substantive motion. Notice of the hearing shall be given to those required to be given notice by the F.R.B.P. or by these Local Bankruptcy Rules, or as ordered by the court. Such notice shall be by telephone, fax, personal service or such service as otherwise ordered by the court.

- (4) Proof of Notice and Proof of Service. Proof of notice of the hearing and proof of service of the papers shall be filed 2 court days before the hearing, unless otherwise ordered by the court. It shall be the duty of the party that has obtained an order shortening time to:
- (A) Telephonic Notice. Make a good faith effort to advise all other parties and their counsel if known, by telephone and confirming letter or by such other means as are reasonably calculated to give equally prompt notice of the date, time and substance of the motion being heard on shortened notice.
  - (B) Expected Attendance. Advise the court in writing of efforts to contact other parties and their counsel and whether any other counsel, after such efforts to advise parties and their counsel, has requested to be present at the time the motion is presented to the court.
  - (C) Delivery of Papers. Deliver copies of all moving papers to all parties as soon as is practicable. Unless otherwise ordered by the court, the papers required to be served shall also include the order shortening time for hearing, and a written notice of motion either on the applicable form designated for mandatory use in the ~~350~~ **F 4001-1** series of the court approved forms (for relief from stay motions under Local Bankruptcy Rule 9013-1(a)(5)), or that satisfies the requirements of Local Bankruptcy Rule 9013-1(a)(4) (for motions under that Rule). The copies that are served do not need to have been conformed by the court, but shall otherwise be identical in substance to the papers filed with the court.
  - (D) Declaration of Notice. Present a declaration of the efforts to communicate with opposing parties and their counsel or present to the court a declaration setting forth facts sufficient to show why the motion should be heard despite failure to contact opposing parties.

**(c) OBJECTION TO TIMING OF HEARING**

At the hearing on the substantive motion, any party may object to the adequacy of the notice provided and seek a continuance for good cause shown.

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**Court's Comment**

**2003 Revision**

Paragraph (b)(4)(C) Delivery of Papers. 350 changed to *F 4001-1* to reflect renumbering of the mandatory Relief From Stay forms.

**2002 Revision**

The title was revised to reflect more accurately the content of the rule. As modified, the rule clarifies the procedures to be followed in filing emergency motions and motions for orders shortening time.

**1998 Revision**

Rule numbered in accordance with the Judicial Conference's Uniform Numbering System for Local Bankruptcy Rules.

*APPLICATIONS* changed to *MOTIONS* in title.

Paragraph (a) Obtaining Hearing Date. *Unless otherwise ordered by the court*, added to the beginning of the first line.

Paragraph (a)(2) Filing the Moving Papers. *Must* changed to *shall* in first and second sentences.

Paragraph (a)(3) Scope of Notice Required. *Must* changed to *shall* in first sentence. (*or the 20 largest unsecured creditors if no committee has been appointed*) added to the end of the first sentence.

Paragraph (a)(5) Proof of Notice to be Presented at the Hearing. *Must* changed to *shall*.

Paragraph (b) MOTIONS TO BE HEARD ON SHORTENED NOTICE. *Must* changed to *shall* and *application* changed to *motion* in the first paragraph.

Paragraph (b)(1) Obtaining Shortened Hearing Date. *Unless otherwise ordered by the court*, added to beginning of first sentence; *all applications* changed to *motions* in the first sentence; *applications* changed to *motions* in the third sentence; *application* changed to *motion* in the fourth and fifth sentences; and *applications* changed to *motions* in the second subparagraph.

Paragraph (b)(2) Form of Proposed Order Shortening Time. *Must* changed to *shall* in second sentence. Third sentence commencing *Upon receipt of the application...*deleted. Sentence commencing *Upon receipt of the motion...*added.

Paragraph (b)(3) Scope of Notice Required. Paragraph amended to expand service and notice requirements by the party.

Paragraph (b)(4) Proof of Notice and Proof of Service. *Must* changed to *shall* in first sentence.